

BASIC PILOT EXTENSION ACT OF 2003

OCTOBER 7, 2003.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2359]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2359) to extend the basic pilot program for employment eligibility verification, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Basic Pilot Extension Act of 2003”.

SEC. 2. EXTENSION OF PROGRAMS.

(a) IN GENERAL.—Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking “6-year period” and inserting “11-year period”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 3. USE OF EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM FOR STATUS INQUIRIES BY GOVERNMENT AGENCIES.

(a) IN GENERAL.—Section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373(c)) is amended by adding at the end the following:

“An inquiry described in the preceding sentence may be submitted and responded to using the confirmation system established under section 404.”.

(b) CONFORMING AMENDMENT.—Section 404(h) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by adding at the end the following:

“(3) STATUS INQUIRIES BY GOVERNMENT AGENCIES.—Notwithstanding any other provision of this section, the confirmation system may be used to submit, and to respond to, inquiries described in section 642(c). In the case of such an inquiry, citizenship or immigration status information may be provided in addition to the identity and employment eligibility information provided under subsections (b) and (c).”.

SEC. 4. OPERATION OF BASIC PILOT PROGRAM IN ALL STATES.

(a) IN GENERAL.—

(1) SCOPE OF OPERATION OF BASIC PILOT PROGRAM.—Section 401(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking “in, at” and all that follows through the semicolon at the end and inserting “in all States;”.

(2) CONFORMING AMENDMENT.—Section 402(c)(2)(B) of such Act (8 U.S.C. 1324a note) is amended by striking “electing—” and all that follows through “(ii) the citizen” and inserting “electing the citizen”.

(b) MAINTENANCE OF LIST OF PARTICIPANTS.—Section 402(c)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended to read as follows:

“(3) MAINTENANCE OF LIST OF PARTICIPANTS.—The Secretary of Homeland Security shall post on the Department of Homeland Security’s website the names of the participants in the basic pilot program (described in section 403(a) of this division).”.

PURPOSE AND SUMMARY

H.R. 2359 extends for five years the operation of the pilot programs for employment eligibility verification instituted by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and allows employers in all states to opt to participate in the basic pilot program.

BACKGROUND AND NEED FOR THE LEGISLATION

I. BACKGROUND

The Immigration Reform and Control Act of 1986 (“IRCA”) made it unlawful for employers to knowingly hire or employ aliens not eligible to work and required employers to check the identity and work eligibility documents of all new employees.¹ IRCA was de-

¹ See, generally, section 274A of the Immigration and Nationality Act.

signed to end the “job magnet” for illegal aliens and thus finally control illegal immigration into the U.S.

If the documents provided by an employee reasonably appear on their face to be genuine, the employer has met its document review obligation. Certain documents, such as passports and resident alien cards, establish both identity and work eligibility. Others, such as most Social Security cards, establish work eligibility. Others, such as drivers’ licenses, establish identity.

If a new hire produces the required documents, the employer is not required to solicit the production of additional documents and the employee is not required to produce additional documents. In fact, an employer’s request for more or different documents than are required, or refusal to honor documents that reasonably appear to be genuine, shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual because of such individual’s national origin or citizenship status.²

The easy availability of counterfeit documents has made a mockery of IRCA. Fake documents are produced by the millions and can be obtained cheaply.³ Thus, the IRCA system both benefits unscrupulous employers who do not mind hiring illegal aliens but want to show that they have met legal requirements and harms employers who do not want to hire illegal aliens but have no choice but to accept documents they know have a good likelihood of being counterfeit.

II. THE BASIC PILOT PROGRAM

In response to the deficiencies of IRCA, title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) instituted three employment eligibility confirmation pilot programs for volunteer employers that were to last for four years. Under the “basic pilot program,” the proffered Social Security numbers and alien identification numbers of new hires would be checked against Social Security Administration and Immigration and Naturalization Service records in order to weed out fraudulent numbers and thus to ensure that new hires are genuinely eligible to work. The pilot is available to employers having locations in California, Florida, Illinois, Nebraska, New York, and Texas. Approximately 11,787 worksites are currently participating in the pilot. Public Law 107–128 extended the authorization of the basic pilot for an additional two years, until this November.

The pilot works as follows:⁴

- As under current law, once an applicant has accepted a job offer, he or she will present certain documents to the employer. The employer, within three days of the hire, must examine the documents to determine whether they reasonably appear on their face to be genuine and complete an I–9 form attesting to this examination.
- The employer will have three days from the date of hire to make an inquiry by phone or other electronic means to the con-

²See generally, section 274B of the INA.

³See e.g., Verification of Eligibility for Employment and Benefits: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary, 104th Cong., 1st Sess. (March 30, 1995).

⁴See generally, sections 403(a) and 404 of IIRIRA.

firmation office established to run the mechanism. If the new hire claims to be a citizen, the employer will transmit his or her name and Social Security number. If the new hire claims to be a non-citizen, the employer will transmit his or her name, INS (or Department of Homeland Security)-issued number, and Social Security number.

- The confirmation office will compare the name and Social Security number provided against information contained in Social Security Administration records and, if necessary, will compare the name and INS or DHS-issued number provided against information contained in DHS records.

- If in checking the records, the confirmation office ascertains that the new hire is eligible to work, the operator will within three days so inform the employer and provide a confirmation number.

- If the confirmation office cannot confirm the work eligibility of the new hire, it will within three days so inform the employer of a tentative nonconfirmation and provide a tentative nonconfirmation number.

- If the new hire wishes to contest a tentative nonconfirmation, secondary verification will be undertaken. Secondary verification is an expedited procedure set up to confirm the validity of information contained in the government records and provided by the new hire. Under this process, the new hire will typically contact or visit the SSA or DHS to see why the government records disagree with the information he or she has provided. If the new hire requests secondary verification, he or she cannot be fired on the basis of the tentative nonconfirmation.

- If the discrepancy can be reconciled within ten days, then confirmation of work eligibility and a confirmation number will be given to the employer by the end of this period.

- If the discrepancy cannot be reconciled within ten days, final denial of confirmation and a final nonconfirmation number will be given by the end of this period. The employer then has two options:

The employer can dismiss the new hire as being ineligible to work in the United States.

The employer can continue to employ the new hire. The employer must notify DHS of this decision. If action is brought by the government, the employer has the burden of proof in showing the new hire is eligible to work. If the employer fails to so prove, the employer will be deemed to have knowingly hired an illegal alien.

The SSA and the DHS agree as part of the pilot to safeguard the information provided to them by employers and to limit access to the information as appropriate under law. An employer must agree not to use the pilot for pre-employment screening of job applicants or for support of any unlawful employment practice, not to verify selectively, and to ensure that the information it receives from the government is used only to confirm employment eligibility and is not otherwise disseminated.

Section 405 of IIRIRA required the INS to submit to the House and Senate Judiciary Committees a report on the basic pilot program after the end of the third and fourth years the program was in effect. The INS selected the Institute for Survey Research at Temple University and Westat to prepare the report, which was submitted to the INS in December of 2001.

The report found that out of 364,987 total transactions between November 1997 and December 1999, 269,269 (74%) of aliens were found to be work-authorized after a check of SSA records and another 48,067 (13%) were found to be work-authorized after a check of INS records; in 32,114 cases (9%), the SSA issued a final nonconfirmation, and in 4,121 (1%) cases, the INS issued a final nonconfirmation.⁵ Ninety percent of new hires found to be work authorized were immediately confirmed by the confirmation system.⁶ In only about 4% of total transactions did new hires contact the Social Security Administration or INS to resolve problems with their work authorization status.⁷ Of those employees who did contact one of the agencies, 99% were found to be work-authorized.⁸

The report found that “an overwhelming majority of employers participating found the basic pilot program to be an effective and reliable tool for employment verification”⁹—96% of employers found it to be an effective tool for employment verification;¹⁰ and 94% of employers believed it to be more reliable than the IRCA-required document check.¹¹ The percentage of employers who found the employment eligibility verification process for new hires to be “not at all burdensome” increased from 36% before they participated in the pilot to 60% after they started participating, because of the greater certainty it provided them.¹² 83% of employers reported that the participating in the pilot reduced uncertainty regarding work authorization.¹³

“Some unauthorized workers were undoubtedly deterred from applying to pilot employers; however, the evaluation cannot provide good estimates of how often this occurs.”¹⁴ The report found that 64% of employers agreed that the number of unauthorized workers who applied for jobs decreased when the basic pilot system was used.¹⁵

“[E]mployees were largely satisfied with the services provided by INS and the Social Security Administration.”¹⁶ Of the employees who contacted local SSA or INS offices as part of the verification process, 95% who visited SSA offices said that their work authorization problem was resolved in a timely, courteous and efficient manner, as did 90% who visited INS offices.¹⁷ Only four aliens filed complaints with the Office of Special Counsel regarding federal agencies.¹⁸

“Because the evidence points to both decreases and increases in discrimination caused by the Basic Pilot program, the evaluation could not determine whether the net effect of the program was discriminatory.”¹⁹ The report found that 45% of participating employers interviewed said that the program made them more willing to

⁵ INS Basic Pilot Summary Report at 24.

⁶ Id. at 16.

⁷ Id. at 34.

⁸ Id. at 21.

⁹ Id. at v.

¹⁰ Id. at 16.

¹¹ Id.

¹² Id. at 33.

¹³ Id.

¹⁴ Id. at 23.

¹⁵ Id. at 25.

¹⁶ Id. at 17.

¹⁷ Id. at 16.

¹⁸ Id. at 17.

¹⁹ Id. at vi.

hire immigrants (while 5% said it made them less willing).²⁰ However, 30% of participating employers reported that they limited work assignments of new hires who had been tentatively nonconfirmed.²¹ Among the 67 interviewed employees who contested tentative nonconfirmations, “45% reported one or more of the following adverse actions: were not allowed to continue working while they straightened out their records, had their pay cut, or had their job training delayed.”²² The report also found that “although failure to comply with the [memorandum of understanding] provision prohibiting employers from prescreening employees leads to discrimination, the level of discrimination does not necessarily increase due to the pilot, since non-pilot employers may also be prescreening. * * * The evaluation found no evidence that Basic Pilot employers were using the pilot to selectively verify new employees on the basis of citizenship. * * *”²³

As to database problems:

Most Federal officials interviewed agreed that the efficient operation of the pilot program was hindered by inaccuracies and outdated information in INS databases. One major contributory problem identified by INS officials is loss of data and delays in data entry for persons recently issued a new or replacement [work] authorization document * * * and for new immigrants and refugees. * * * INS is addressing its data entry delays through both policy and operational changes that are intended to significantly reduce the delay between the time a person becomes authorized to work and when the information is entered into the INS database and INS documentation is issued. Although some improvements have been made since the pilot evaluation concluded, others will take longer to implement.”²⁴

The report estimated that the total annual cost of the current pilot for the federal government, participating employers, and newly hired employees, is \$6 million, and that the cost would be \$11 million for a nationwide voluntary program and \$11.7 billion for a nationwide mandatory program.²⁵ The report found that the “Social Security Administration and INS are currently capable of handling either of the voluntary programs described here [a voluntary program open to employers nationwide or an enhanced voluntary program in selected states], or some other program of limited scope.”²⁶ However, it recommended against “a mandatory or large-scale program.”²⁷

On June 10, 2003, the Committee received a letter from the American Meat Institute, Cargill, Inc., ConAgra Foods, Inc., the National Chicken Council, the National Meat Canners Association, the National Turkey Federation, Premium Standard Farms, Seaboard Corp., Smithfield Foods, Inc., and Tyson Foods, Inc., “asking

²⁰Id. at 28.

²¹Id. at 29.

²²Id. at 19.

²³Id. at 29.

²⁴Id. at 17.

²⁵Id. at 37.

²⁶Id. at 38.

²⁷Id. at 41.

for your support * * * in passing H.R. 2359. * * * The Basic Pilot is the best tool employers have to make sure they are not hiring unauthorized aliens. * * * Employers have embraced the tools granted by Congress, and Congress should grant a continuation of [the] pilot Employment Verification program by adopting this bill quickly.”

III. H.R. 2359

H.R. 2359 as amended by the Judiciary Committee would extend operation of the pilot programs for an additional 5 years.

Section 401(c)(1) of IIRIRA provided that the basic pilot program must be operated in, at a minimum, 5 of the 7 states with the highest estimated population of aliens who are not lawfully present in the United States. H.R. 2359 modifies IIRIRA to allow any employer to chose to participate in the pilot program, regardless of what state it is located in. It is time to allow volunteer employers throughout the nation to participate in the pilot. The pilot program study concluded that “the Social Security Administration and INS are currently capable of handling” a nationwide voluntary program. The basic pilot program has been operating very successfully for the past six years. As stated, 96% of participating employers believed it to be an effective tool for employment verification. In addition, 94% of employers believed it to be more reliable than the document check required by IRCA.

Also, “employees were largely satisfied with the services provided by INS and the Social Security Administration.” Now, the pilot program can and should be improved. DHS must reemphasize to participating employers that they cannot take adverse actions against new employees tentatively found ineligible to work until there has been a final confirmation. And DHS must improve its databases, especially in imputing data for persons recently issued a work authorization document and for new immigrants and refugees. However, the report found that “INS is [already] addressing its data entry delays through both policy and operational changes that are intended to significantly reduce the delay between the time a person becomes authorized to work and when the information is entered into the INS database and INS documentation is issued.”

The bill also provides that inquiries by federal, state or local government agencies under section 642(c) of IIRIRA may be made using the mechanism of the pilot programs. Section 642(c) provides that the Department of Homeland Security shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information. Implementation of this requirement has been hampered by lack of a defined system that verifies citizenship and immigration status. Currently several types of agencies, including departments of motor vehicles, professional licensing bureaus, and agencies providing clearances and badges to work in sensitive or secure areas, have sought to enter into agreements with the SAVE Program (which verifies immigration status for certain federal, state, and local government agencies that administer public benefit programs) to verify the status of individuals. These agencies can only verify noncitizen and naturalized applicants through the

SAVE system. Although they can enter into separate verification arrangements with SSA, these additional verification steps are time consuming and duplicative. Moreover, SSA does not have the work authorization and citizenship status of all persons. Using a more comprehensive verification program, like the basic pilot, where all applicants are verified electronically through a single query that checks both SSA and, if necessary, DHS, databases, is clearly more efficient for these agencies. Furthermore, by verifying all applicants rather than only those declaring noncitizen status, the problem of false attestation to U.S. citizenship is largely eliminated, thus resulting in more accurate verification.

HEARINGS

No hearings were held on H.R. 2359.

COMMITTEE CONSIDERATION

On September 24, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 2359 with an amendment by a vote of 18 yeas to 8 nays, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following roll call vote occurred during the Committee's consideration of H.R. 2359.

HOUSE OF REPRESENTATIVES
108TH CONGRESSSubject: HR. 2359final passage

Present		Ayes	Nays	Present
✓	MR. HYDE.....	✓		
✓	MR. COBLE.....	✓		
✓	MR. SMITH.....	✓		
✓	MR. GALLEGLY.....	✓		
✓	MR. GOODLATTE.....	✓		
✓	MR. CHABOT.....		✓	
✓	MR. JENKINS.....	✓		
✓	MR. CANNON.....	✓		
	MR. BACHUS.....			
✓	MR. HOSTETTLER.....	✓		
✓	MR. GREEN.....			
✓	MR. KELLER.....	✓		
✓	MS. HART.....	✓		
✓	MR. FLAKE.....	✓		
✓	MR. PENCE.....	✓		
✓	MR. FORBES.....	✓		
✓	MR. KING.....	✓		
✓	MR. CARTER.....	✓		
✓	MR. FEENEY.....	✓		
✓	MRS. BLACKBURN.....	✓		
✓	MR. CONYERS.....		✓	
✓	MR. BERMAN.....			
	MR. BOUCHER.....			
✓	MR. NADLER.....			
✓	MR. SCOTT.....		✓	
✓	MR. WATT.....		✓	
✓	MS. LOFGREN.....			
✓	MS. JACKSON LEE.....		✓	
✓	MS. WATERS.....		✓	
	MR. MEEHAN.....			
✓	MR. DELAHUNT.....			
	MR. WEXLER.....			
✓	MS. BALDWIN.....		✓	
	MR. WEINER.....			
✓	MR. SCHIFF.....			
✓	MS. SÁNCHEZ.....		✓	
✓	MR. SENSENBRENNER, <i>Chairman</i>	✓		
	TOTAL.....	18	8	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2359, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

OCTOBER 3, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2359, the Basic Pilot Extension Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

H.R. 2359—Basic Pilot Extension Act of 2003

CBO estimates that implementing H.R. 2359 would cost around \$2 million a year over the 2004–2008 period, assuming the availability of appropriations. Enacting the bill would not affect direct spending or receipts. H.R. 2359 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal government.

The Bureau of Citizenship and Immigration Services (BCIS) and the Social Security Administration (SSA) administer three pilot programs to assist employers in confirming the eligibility of prospective employees to work in the United States. The programs provide employers with software, training, and access to BCIS and SSA databases to determine work eligibility. Under current law, the major pilot program will end in 2003, while the two other programs will terminate in 2005. H.R. 2359 would extend each program by five years and would expand the major pilot program to all 50 states (currently, it is offered in only six states).

According to the BCIS, it costs \$600,000 a year to operate the programs, mostly for the major pilot program. Implementing H.R.

2359 would extend the major pilot program through the end of fiscal year 2008 and would extend the other two programs until the middle of fiscal year 2010. Thus, CBO estimates that extending the current programs would cost about \$600,000 a year over the 2004–2008 period.

The major pilot program is currently available to employers in California, Florida, New York, Texas, Illinois, and Nebraska. These states contain more than one third of the nation’s businesses. According to BCIS, expanding the major pilot program to all 50 states would cost about \$1 million annually. In total, implementing H.R. 2359 would cost around \$2 million a year, subject to the availability of appropriations.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

The short title of the bill is the “Basic Pilot Extension Act of 2003”.

Section 2. Extension of programs

Subsection (a) amends section 401(b) of the Immigration and Nationality Act to extend the length of the basic pilot program (and the other pilot programs contained in section 401(c)) for additional five years.

Section (b) provides that the amendment made by subsection (a) shall take effect on the date of enactment.

Section 3. Use of employment eligibility confirmation system for status inquiries by government agencies

Subsection (a) amends section 642(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by providing that inquiries made pursuant to section 642(c) may be submitted and responded to using the basic pilot program’s confirmation system.

Subsection (b) amends section 404(h) of IIRIRA to specify that the basic pilot program’s confirmation system can respond to inquiries described in section 642(b) of IIRIRA and may provide citizenship and immigration status information in addition to identity and employment eligibility information.

Section 4. Operation of basic pilot program in all states

Subsection (a) amends section 401(c)(1) of IIRIRA to provide that the basic pilot program shall operate in all states.

Subsection (b) amends section 402(c) of IIRIRA to provide that the Department of Homeland Security may not reject for a professed lack of resources an employer’s request to participate in the basic pilot program or limit the program’s applicability to certain states or places.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 2359 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**ILLEGAL IMMIGRATION REFORM AND IMMIGRANT
RESPONSIBILITY ACT OF 1996**

**DIVISION C—ILLEGAL IMMIGRATION
REFORM AND IMMIGRANT RESPONSIBILITY
ACT OF 1996**

**SEC. 1. SHORT TITLE OF DIVISION; AMENDMENTS TO IMMIGRATION
AND NATIONALITY ACT; APPLICATION OF DEFINITIONS
OF SUCH ACT; TABLE OF CONTENTS OF DIVISION; SEVER-
ABILITY.**

(a) SHORT TITLE.—This division may be cited as the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996”.

* * * * *

**TITLE IV—ENFORCEMENT OF
RESTRICTIONS AGAINST EMPLOYMENT**

**Subtitle A—Pilot Programs for
Employment Eligibility Confirmation**

SEC. 401. ESTABLISHMENT OF PROGRAMS.

(a) * * *

(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Attorney General shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act. Unless the Congress otherwise provides, the Attorney General shall terminate a pilot program at the end of the **[6-year period]** *11-year period* beginning on the first day the pilot program is in effect.

(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The Attorney General shall provide for the operation—

(1) of the basic pilot program (described in section 403(a) of this division) **[in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States;]** *in all States;*

* * * * *

SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

(a) * * *

* * * * *

(c) GENERAL TERMS OF ELECTIONS.—

(1) * * *

(2) SCOPE OF ELECTION.—

(A) * * *

(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES.—In addition, the Attorney General may permit a person or entity [electing—

[(i) the basic pilot program (described in section 403(a) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating, or

[(ii) the citizen] *electing the citizen* attestation pilot program (described in 403(b) of this division) or the machine-readable-document pilot program (described in section 403(c) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2) of this division, respectively.

[(3) ACCEPTANCE AND REJECTION OF ELECTIONS.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the Attorney General shall accept all elections made under subsection (a).

[(B) REJECTION OF ELECTIONS.—The Attorney General may reject an election by a person or other entity under this section or limit its applicability to certain States or places of hiring (or recruitment or referral) if the Attorney General has determined that there are insufficient resources to provide appropriate services under a pilot program for the person's or entity's hiring (or recruitment or referral) in any or all States or places of hiring.]

(3) *MAINTENANCE OF LIST OF PARTICIPANTS.—The Secretary of Homeland Security shall post on the Department of Homeland Security's website the names of the participants in the basic pilot program (described in section 403(a) of this division).*

* * * * *

SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

(a) * * *

* * * * *

(h) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.—

(1) * * *

* * * * *

(3) *STATUS INQUIRIES BY GOVERNMENT AGENCIES.*—*Notwithstanding any other provision of this section, the confirmation system may be used to submit, and to respond to, inquiries described in section 642(c). In the case of such an inquiry, citizenship or immigration status information may be provided in addition to the identity and employment eligibility information provided under subsections (b) and (c).*

* * * * *

TITLE VI—MISCELLANEOUS PROVISIONS

* * * * *

Subtitle D—Other Provisions

* * * * *

SEC. 642. COMMUNICATION BETWEEN GOVERNMENT AGENCIES AND THE IMMIGRATION AND NATURALIZATION SERVICE.

(a) * * *

* * * * *

(c) *OBLIGATION TO RESPOND TO INQUIRIES.*—The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information. *An inquiry described in the preceding sentence may be submitted and responded to using the confirmation system established under section 404.*

* * * * *

COMMITTEE JURISDICTION LETTERS

COMMITTEE ON EDUCATION AND THE WORKFORCE,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 7, 2003.

Hon. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
Rayburn HOB, Washington, DC.

Attn: Joseph Gibson

DEAR CHAIRMAN SENSENBRENNER: This letter is to confirm our agreement regarding H.R. 2359, “Basic Pilot Extension Act of 2003,” which was introduced by Rep. Ken Calvert and referred to the Committee on the Judiciary and in addition the Committee on Education and the Workforce. This bill would extend the authorization of the pilot programs for employment eligibility verification instituted by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The basic pilot is set to expire next month, November, 2003; the bill would extend the pilot for five years. Amend-

ments included in your Committee would expand the pilot to allow employers in all States to participate in the program.

I support the five year authorization extension of the basic pilot program. I do have concerns that other matters may delay the legislation needed to extend the basic pilot program and stand ready to expedite those provisions. However, given this program's importance to employers and employees who are currently participating in it and its impending expiration, I do not intend to hold a markup of this legislation.

I do so with the understanding that this procedural route should not be construed to prejudice the jurisdictional interest and prerogatives of the Committee on Education and the Workforce on these provisions or any other similar legislation and will not be considered as precedent for consideration of matters of jurisdictional interest to my Committee in the future. I would also expect your support in my request to the Speaker for the appointment of conferees from my Committee with respect to matters within the jurisdiction of my Committee should a conference with the Senate be convened on this or similar legislation.

I thank you for working with me regarding this matter. If you have questions regarding this matter, please do not hesitate to call me.

Sincerely,

JOHN BOEHNER,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 7, 2003.

Hon. JOHN BOEHNER,
*Chairman, Committee on Education and the Workforce,
Rayburn Building, Washington, DC.*

DEAR CHAIRMAN BOEHNER: Thank you for your willingness to waive consideration of H.R. 2359, the "Basic Pilot Extension Act of 2003."

I agree that by waiving consideration of H.R. 2359, the Committee on Education and the Workforce in no way alters or waives its jurisdiction over the matters within the bill that fall within its Rule X jurisdiction. I further agree that I will support your request to the Speaker for conferees should this bill or similar legislation go to conference.

I will place a copy of your letter and this response in the Committee on the Judiciary's report on H.R. 2359 and in the Congressional Record during floor debate on H.R. 2359. I appreciate your cooperation in this matter.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

MARKUP TRANSCRIPT, BUSINESS MEETING, WEDNESDAY, SEPTEMBER 24, 2003, HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY, WASHINGTON, DC

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill H.R. 2359, the Basic Pilot Extension Act of 2003.

For purposes of markup, I move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

108TH CONGRESS
1ST SESSION

H. R. 2359

To extend the basic pilot program for employment eligibility verification,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2003

Mr. CALVERT (for himself, Mr. OSBORNE, and Mr. LATHAM) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To extend the basic pilot program for employment eligibility
verification, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Basic Pilot Extension
5 Act of 2003”.

6 **SEC. 2. EXTENSION OF PROGRAMS.**

7 (a) IN GENERAL.—Section 401(b) of the Illegal Im-
8 migration Reform and Immigrant Responsibility Act of

1 1966 (8 U.S.C. 1324a note) is amended by striking “6-
2 year period” and inserting “11-year period”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this Act.

6 **SEC. 3. USE OF EMPLOYMENT ELIGIBILITY CONFIRMATION**
7 **SYSTEM FOR STATUS INQUIRIES BY GOVERN-**
8 **MENT AGENCIES.**

9 (a) IN GENERAL.—Section 642(c) of the Illegal Im-
10 migration Reform and Immigrant Responsibility Act of
11 1996 (8 U.S.C. 1373(c)) is amended by adding at the end
12 the following:

13 “An inquiry described in the preceding sentence may be
14 submitted and responded to using the confirmation system
15 established under section 404.”.

16 (b) CONFORMING AMENDMENT.—Section 404(h) of
17 the Illegal Immigration Reform and Immigrant Responsi-
18 bility Act of 1996 (division C of Public Law 104–208; 110
19 Stat. 3009–664) is amended by adding at the end the fol-
20 lowing:

21 “(3) STATUS INQUIRIES BY GOVERNMENT
22 AGENCIES.—Notwithstanding any other provision of
23 this section, the confirmation system may be used to
24 submit, and to respond to, inquiries described in sec-
25 tion 642(c). In the case of such an inquiry, citizen-

1 ship or immigration status information may be pro-
2 vided in addition to the identity and employment eli-
3 gibility information provided under subsections (b)
4 and (c).”.

The Chair recognizes the gentleman from Indian, Mr. Hostettler, for five minutes to explain the bill.

Mr. HOSTETTLER. Thank you, Mr. Chairman.

Mr. Chairman, the Immigration Reform and Control Act of 1986, or IRCA, made it unlawful for employers to knowingly hire or employ aliens not eligible to work and required employers to check the identity and work eligibility documents of all new employees.

The easy availability of counterfeit documents has made a mockery of IRCA. Fake documents are produced by the millions and can be obtained cheaply. Thus, the IRCA system both benefits unscrupulous employers who do not mind hiring illegal aliens but want to show they have met legal requirements, and harms employers who don't want to hire illegal aliens but have no choice but to accept documents they know have a good likelihood of being counterfeit.

Title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 instituted three employment eligibility confirmation pilot programs for volunteer employers that were to last for four years. Under the basic pilot, the Social Security numbers and alien identification numbers of new hires are checked against Social Security Administration and Department of Homeland Security records in order to weed out fraudulent numbers and, thus, to ensure that new hires are genuinely eligible to work.

The pilot is currently available to employers having locations in California, Florida, Illinois, Nebraska, New York and Texas. Approximately 11,787 worksites are currently participating in the pilot. The SSA and the Department of Homeland Security agree as part of the pilot to safeguard the information provided to them by employers and to limit access to the information, as appropriate.

An employer must agree not to use the pilot for pre-employment screening of job applicants or for support of any unlawful employment practice, not to verify selectively, and to ensure that the information it receives from the government is used only to confirm employment eligibility and is not otherwise disseminated.

In the last Congress we extended the authorization of the pilot program through this November. H.R. 2359, introduced by our colleague; Ken Calvert, would extend operation of the pilot programs for an additional five years. A 2001 study on the implementation of the pilot program found that 96 percent of participating employers believed the pilot to be an effective and reliable tool for employment verification. The study recommended the continuation of the pilot.

On June 10, 2003, I received a letter from the American Meat Institute, the National Chicken Council, the National Turkey Federation, among other trade associations and companies in the food processing industry, asking for my support in passing H.R. 2359.

"The basic pilot is the best tool employers have to make sure they are not hiring unauthorized aliens. Employers have embraced the tools granted by Congress and Congress should grant a continuation of the pilot employment verification program by adopting this bill quickly." End quote.

At the request of the Department of Homeland Security, H.R. 2359 would also provide that inquiries by Federal, State or local government agencies seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of

the agency for any purpose authorized by law may be made using the mechanism of the pilot program.

Mr. Chairman, I urge my colleagues to support H.R. 2359 and yield back the balance of my time.

Chairman SENSENBRENNER. Who wishes to give the minority opening statement? The gentlewoman from California.

Ms. LOFGREN. No, I don't have an opening statement. I have—

Chairman SENSENBRENNER. Without objection, all members' opening statements will appear in the record at this point.

[The statements follow:]

STATEMENT OF CONGRESSMAN JOHN CONYERS, JR.

The Basic Pilot Extension Act of 2003, H.R. 2359, would extend for an additional five years the Basic Pilot Program to electronically verify the employment authorization of newly hired employees. The Basic Pilot program has been in effect since 1996 and now operates in six states.

I support extending the Basic Pilot Program for employment eligibility verification. However in its current form, this bill goes much further than a simple extension. In fact, section three would permit states and local governments to use the Basic Pilot confirmation system as a national registry of all U.S. citizens and immigrants. This would expand the pilot program far beyond the purview of employment and dangerously close to a national ID program—with no privacy protections or safeguards against abuse by individuals within state and local governments.

Congress requested a report on the Basic Pilot program which we did not receive before the last time we considered an extension of the program in this committee. Now that we have received it, two years late, it appears to recommend that the program should not be expanded beyond the pilot—both because there are flaws in the program and because an expansion would be expensive. In particular, the report points out that the efficient operation of the pilot program was hindered by inaccurate and outdated information in INS databases and that there have been complaints alleging actual or potential harm to individuals.

Before we consider expanding this program far beyond its originally intended function, we must first examine whether it is accomplishing its prescribed goal and extending the pilot program for an additional five years will give us time to assess the deficiencies outlined in the report. Any expansion of the scope of the information sharing in the program would be a major change to existing law and should be carefully studied and considered on its own merits.

STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

The Basic Pilot is a temporary, voluntary program for electronically verifying the employment authorization of newly hired employees. The Basic Pilot Extension Act of 2003, H.R. 2359, would extend the program for another 5 years.

The primary goal of employment verification is to ensure that American employers hire workers who are authorized to work in the United States. Studies by the General Accounting Office (GAO), the Commission on Immigration Reform, and others have found that the former Immigration and Naturalization Service (INS) Form I-9 paper employment verification system is confusing and easily circumvented. The goal of the Basic Pilot is to develop new employment verification procedures that will improve on the Form I-9 system by reducing false claims to U.S. citizenship and document fraud, discrimination, violations of civil liberties and privacy, and employer burden.

INS and the Social Security Administration (SSA) implemented the Basic Pilot in November 1997, in California, Florida, Illinois, New York, and Texas. Nebraska was added on March 1999, to assist employers in the meat packing industry.

Under the Basic Pilot, the employer examines the documents of a newly hired employee within 3 days of the date of which employment commences and reports the pertinent information to an office at the Social Security Administration (SSA). The SSA office compares the information provided by the newly hired employee with Social Security records. In the case of a foreign worker, the Social Security office will then pass the information on to a designated office at the Bureau of Citizenship and Immigration Services (BCIS). The BCIS office, which is taking the place of the former INS, compares the data provided by the employee with immigration records to determine whether he or she is authorized to work in the United States.

If BCIS confirms that a newly hired alien employee is authorized to work in the United States, it issues a confirmation number. If BCIS determines instead that the new employee is not authorized for employment in the United States, it issues a tentative nonconfirmation number. Procedures are available to permit either the employer or the employee to contest a tentative nonconfirmation before it becomes final.

The Basic Pilot is an effective employee verification program that makes it easier and safer for employers to hire foreign workers, which makes it easier for lawful foreign workers to find employment. A participating employer does not have to worry about sanctions for hiring an illegal worker. Under the program, the determination of whether an alien employee has valid work authorization is made by BCIS.

The Basic Pilot has received support from the U.S. Department of Agriculture (USDA). The USDA's recent security guidelines for Food Safety Inspection Services include a recommendation that employers in the meat industry should consider participating in the Basic Pilot.

Notwithstanding the fact that I favor the Basic Pilot, I have concerns about problems that have been encountered in implementing it. Section 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) required the Attorney General to submit a report on the Basic Pilot to the House and Senate Judiciary Committees. The Attorney General selected the Institute for Survey Research at Temple University to do the study necessary for the preparation of this report. The study was done before the Basic Pilot responsibilities of former INS were assumed by BCIS. The Institute identified significant but hopefully temporary areas of concern in the way the Basic Pilot has been implemented, such as the following examples:

1. The efficient operation of the pilot program was hindered by inaccuracies and outdated information in INS databases.
2. One-third of the employers said they had encountered difficulties in setting up the Basic Pilot program. Most of the problems involved modem connection, software, hardware, and telephone lines. Many employers also mentioned having these problems when the system was online.
3. Approximately 39% of employers reported that SSA never or only sometimes returned calls promptly and 43% reported similar difficulties with INS.
4. Improvements need to be incorporated into the Basic Pilot to reduce discretion in how employers use the system and in the extent to which they follow pilot procedures designed to protect employee rights.
5. Procedural changes are needed to increase checks on name variations and to perform edit and consistency checks of the data entered by the employer.
6. A complaint about the Basic Pilot that was mentioned by 16% of employers is that at times the number of employees hired is so great that it is impossible to submit the information required by the deadline of 3 business days.

Notwithstanding these difficulties, the Basic Pilot is a good, effective program, and it is the best tool available for employers to ensure that their new hires are legally eligible for employment in the United States. In addition, the memorandum of understanding that employers and the government enter into for participating in the program ensures that the employers will use the program uniformly and without discrimination. I will support extending the Basic Pilot program, but I have reservations about the desirability of extending it for 5 years without an indication that the problems identified by the Institute for Survey Research have been resolved. For the same reason, I am opposed to expanding the program now. I agree with the Institute's recommendation that the Basic Pilot is not ready for larger-scale implementation at this time.

Thank you.

STATEMENT OF CONGRESSMAN STEVE KING

Chairman Sensenbrenner, thank you for holding this markup today. Verification of employment eligibility is essential to enforcing our immigration laws. I understand that the bill we are considering today extends the current, basic pilot program. This is a step in the right direction. I would like to see this pilot program opened to employers in all states who would like to participate. And, although the program we are considering today is voluntary, we should work to make employment eligibility verification mandatory for all employers.

Employment verification is good for business. We all remember the effect of the terrorist attacks of September 11th on American businesses and our economy. Wall Street was shuttered for several days, the market dropped markedly, businesses were wiped out, companies laid off thousands of workers, and the lives of hundreds

of thousands of Americans were disrupted. There is no worse economic environment for business and workers than one without public safety and security.

Employers who break the law and hire illegal aliens impose costs on our society, including, significant lost federal withholding for "off the books" paychecks, with taxpayers and honest employers picking up the costs of public health care, workers compensation and unemployment insurance, as well as Social Security and Medicare contributions. If illegal immigration is not stopped, our society must bear the effects of mass immigration on congestion, overcrowded schools, low wages and other quality-of-life measures.

Finally, I am concerned about the plight of honest employers who follow the law, while their unscrupulous competitors gain an unfair competitive advantage by knowingly hiring illegal workers. We must enforce our immigration laws to level the playing field. Ensuring that employers do not violate the law by hiring illegal aliens is a key component of an overall common sense immigration policy.

Chairman SENSENBRENNER. Are there amendments?

Mr. HOSTETTLER. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Indiana.

Mr. HOSTETTLER. Mr. Chairman, I have an amendment at the desk.

[The amendment of Mr. Hostettler follows:]

AMENDMENT TO H.R. 2359
OFFERED BY MR. HOSTETTLER

Page 3, after line 4, insert the following:

1 **SEC. 4. OPERATION OF BASIC PILOT PROGRAM IN ALL**
2 **STATES.**

3 (a) IN GENERAL.—Section 401(c)(1) of the Illegal
4 Immigration Reform and Immigrant Responsibility Act of
5 1996 (8 U.S.C. 1324a note) is amended by striking “in,
6 at” and all that follows through the semicolon at the end
7 and inserting “in all States;”.

8 (b) CONFORMING AMENDMENTS.—Section 402(c) of
9 the Illegal Immigration Reform and Immigrant
10 Responsibility Act of 1996 (8 U.S.C. 1324a note) is
11 amended—

12 (1) in paragraph (2)(B), by striking “electing—
13 ” and all that follows through “(ii) the citizen” and
14 inserting “electing the citizen”; and

15 (2) by striking paragraph (3) and redesignating
16 paragraph (4) as paragraph (3).

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 2359, offered by Mr. Hostettler. Page 3, after line 4, insert the following—

Mr. HOSTETTLER. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for five minutes.

Mr. HOSTETTLER. Thank you, Mr. Chairman.

The basic pilot program has been operating very successfully for the past six years. As I stated, 96 percent of participating employers believe it to be an effective tool for employment verification. In addition, 94 percent of employers believe it to be more reliable than the document check required by the Immigration Reform and Control Act of 1986.

The percentage of employers who found the overall employment eligibility verification process to be “not at all burdensome”, increased from 36 percent to 60 percent after they started participating in the pilot, because of the greater certainty the pilot provides that their employees are legal. I think it is time to allow volunteer employers throughout the Nation to participate in the pilot.

Currently, the Department of Homeland Security must operate the pilot in at least five of the seven States with the highest estimated number of illegal aliens. I don't think there is any reason why employers located elsewhere in the Nation should not be allowed to participate. The study of the pilot program completed for INS stated that, “The Social Security Administration and INS are currently capable of handling a nationwide voluntary program.”

My amendment would accomplish this aim. It would allow any U.S. employer to elect to participate in the pilot program. The pilot program study estimated that 80 percent of illegal aliens live in the five original pilot program States—California, Florida, Illinois, New York and Texas—and that these States contain 35 percent of the Nation's employers. So it seems reasonable to hypothesize that overall usage of the program would likely double if it were opened up to employers nationwide. This is exactly what the study predicts.

The study also predicts that the total cost of the pilot annually for the government, employers and employees, would go from \$6 million to \$11 million if made nationwide. This small increase in cost would be more than made up for by the powerful boost the pilot program would give to immigration law enforcement.

Mr. Chairman, I urge my colleagues to support this amendment and yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you very much, Mr. Chairman.

I hope—This is an important issue, and if this amendment passes, there will be a great deal of opposition to the bill. The chickens and the turkeys and the other groups that support the extension of the pilot program support the extension of the pilot program, and the pilot program, at least in concept, makes a great deal of sense. Let's find a way to allow employers to easily verify the work authorization status of the people that they want to offer jobs to.

But the study that the chairman of the subcommittee refers to in speaking in favor of the amendment concludes that the worst thing to do now is to expand this pilot program, for a whole series of reasons. And I do have to put this into context.

The subcommittee has never held the hearing on this. The INS spent millions of dollars commissioning a study. The study comes back with a series of flaws and problems that cause it to conclude that, while the pilot project should continue as we seek to iron out those flaws, the worst thing to do is to expand it.

Without a hearing, without a subcommittee markup, without a discussion of the points made by the study commissioned directly about this program, we're now being asked to provide an expansion to all States and all employers who want to participate. It's a terrible mistake to do that.

Let me try and outline some of the flaws pointed out by the INS' own study of this program. First, the program was hindered by inaccuracies and outdated information in the INS databases. The program did not consistently provide timely immigration status data, which delayed the confirmation of a worker's employment authorization in one-third of the cases.

According to the report, the greatest burden for inaccurate and unreliable data falls on workers, who are penalized by employers unsure of their work status. You call to verify. You don't get a quick answer. You've got to move on in terms of your own employment needs. You're going to pass over the employee who you otherwise wanted to hire, but can't get the answer back from the pilot program's verification process.

A sizeable number of workers who were not confirmed were, in fact, work authorized, but for a variety of reasons, didn't straighten out their records with the INS or the Social Security Administration. Forty-two percent of—not necessarily a representative sample, but a sample taken by the investigators—were found to be work authorized compared to less than a quarter which were most likely unauthorized.

That's a huge percentage of people who were otherwise authorized but told initially by the INS or the SSA, the Social Security Administration, that they were not work authorized. People who had a right to get a job, who the employer wanted to hire, were not hired because of misinformation. That's a compelling argument against immediately expanding it without further probing what is being done to fix the flaws.

Some employers surveyed did not follow the federally-mandated memorandum of understanding that they were required to sign as a condition of participating in the basic pilot. Participating employers engaged in prohibited employment practices, including pre-employment screening. In other words, you're only supposed to ask the worker you have offered a job to, you're only supposed to verify that person, not prospective workers. You aren't supposed to be getting information about people until you have decided, if this person is authorized, I want to hire him. That was not what went on.

That not only denies the worker a job, but also the opportunity to contest database inaccuracies, taking adverse employment action based on tentative determinations, which penalizes workers while they and the INS work to resolve database errors and the failure of employers to inform workers of their rights under the program.

Some employers compromised the privacy of workers in various ways, such as failing to safeguard access to the computer used to maintain the pilot system, including leaving passwords and instructions in plain view. We're talking about personal information. We authorized that that be distributed, but only in secure ways.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. BERMAN. I ask unanimous consent for two additional minutes.

Chairman SENSENBRENNER. Well, the committee will be recessed to go to the vote. We have one vote now and about three votes at 12:30.

Let me say we have to have a reporting quorum when we come back, because our sequential referral on the sex trafficking act expires on Monday.

The committee is recessed. Members will please return promptly.
[Recess.]

Chairman SENSENBRENNER. The committee will be in order.

Without objection, the gentleman from California, Mr. Berman, will be recognized for two additional minutes.

Mr. BERMAN. I wish the Chairman of the Subcommittee were here. He and I had a conversation on the floor just a minute ago.

This is about an unlimited voluntary expansion. The bill is not going to become law this year, this bill. A number of us have to oppose this bill unless we have a hearing where we have a chance to just understand what the problems that the INS's own study concluded exists with this program, what they're going to do to rectify it if it's going to be expanded. I don't have any problem with a bill extending the program. It's the expansion of it that seems to me to compel that kind of a hearing. The Chairman set a hearing twice. Through no fault of his own, hurricane and some—I can't remember what else it was. I think we ended up leaving a day earlier than we expected. We didn't get to have that hearing.

The thing I would ask is, given that it's not going to become law this year, this is not going to pass the Senate this year, can we have the hearing, see if the INS and the Social Security Administration are going to make the corrections. And I will just end by quoting what the study said regarding the issue of inspection because it said, "The evaluation uncovered sufficient problems in the design and the implementation of the current program to preclude recommending that it be significantly expanded. Some of these problems could become insurmountable if the program were to be expanded dramatically in scope."

All these problems that I mentioned earlier are compounded perhaps in an exponential fashion with a massive expansion. The question remains whether the program can be modified in a way that will permit it to maintain or enhance its current benefits while overcoming its weaknesses. The study concluded it cannot, they cannot recommend it be significantly expanded. Congress mandated the study. INS chose who was going to do the study. The study came back, comes back, talks about flaws, recommends against expansion at this time. I say we at least have a hearing to study the specific flaws they found out before we move the bill further, and try to get a consensus on this rather than have it divisive.

Chairman SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from Iowa seek recognition?

Mr. KING. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

In response to the gentleman, the information we have before us shows that they have commissioned a study. And that study, INS is currently capable of handling either of the voluntary programs described. And as I listen to this rebuttal I would just, I would just say this, that as an employer and someone who has met payroll and filled out I-9s for about 28 years, and at least after the Act was passed, that to argue that an employer shouldn't have the opportunity to verify the legality of the person—not the applicant, but the person whom they've agreed to hire simply on the condition that they verify in a positive fashion that they have met the employment requirements in this country. If it works for a pilot program, if the study verifies that it does work in the pilot program, and if they're prepared to move forward and I'm support of—I'm in support of Mr. Hostettler's amendment, and I would like to yield the balance of my time to the gentleman from Indiana.

Mr. HOSTETTLER. I thank the gentleman from Iowa.

In response to my colleague from California's concerns, I would just like to say at the outset that I do sympathize with the fact that we did not have a hearing on this, and actually did not mark it up on two occasions, once as a result of a lack of a quorum and the other as a result of Hurricane Isabel. We were forced to not hold such proceedings.

But I would like to point out that according to the study the issue is whether we should have a voluntary program expanded to the rest of the country, over and above the current pilot states, and according to the study, it says quote: "Social Security Administration and INS are currently capable of handling either of the voluntary programs described here or some other program of limited scope." However, compliance for the mandatory programs would most likely be poor unless there was a high probability of being monitored and penalized for noncompliance. And what we're talking about here is not a mandatory program, but an expansion of a voluntary program.

Another issue is the program as it is now compared to what the rest of the country are subject to with regard to IRCA of 1986. The rest of the country must comply with the Immigration Reform and Control Act of 1986. There are pilot states that have the ability to use this program, which the preponderance of people who are using that program in the pilot states like much better than the old program.

So what this amendment does is simply expand the program to allow for voluntary participation by companies across the country and not just those limited by the original, the original pilot.

And so there is a difference. The study does say that Social Security and INS would be capable of handling it and that's why—

Mr. BERMAN. Would the gentleman yield just on that one point?

Mr. HOSTETTLER. Yes, sir.

Mr. BERMAN. You were not in the room when I read the conclusion of the evaluation that we mandated and INS commissioned.

The evaluation, it says, quote: "The evaluation uncovered sufficient problems in the design and implementation of the current program," which is voluntary. I mean the current program is voluntary too. Only employers who want to in those states participate. To preclude, recommending that it be significantly expanded, that's a recommendation that they can't—that's their thing. We can't recommend that it be expanded. Expanding it to 50 states, even though on a voluntary basis, is a significant expansion.

Mr. HOSTETTLER. Reclaiming my time, they actually do not say that with regard to a voluntary program. They say that with regard to a mandatory program, that expanding it on a mandatory basis would not be appropriate, but a voluntary expansion, as the study says, relates to the fact that Social Security and INS are both capable of such an expansion of the voluntary system. And what we are saying is that no system is without some flaws, but the scenario that we find ourselves in is that the pilot program is a better program.

Chairman SENSENBRENNER. Time of the gentleman from Iowa has expired.

Ms. JACKSON-LEE. Mr. Chairman.

Chairman SENSENBRENNER. Gentlewoman from Texas.

Ms. JACKSON-LEE. I thank the distinguished Chairman. I would like to rise in support of the underlining bill dealing with the extension of the basic pilot program because I do believe that we need to commit ourselves to the underlying premise which is that employers are hiring individuals based upon their credentials. I've always said that work is yet undone in this committee because we need to pursue the earned access to legalization, which would then provide documentation for a number of our undocumented aliens in order that they may do what they want to do, which is to come here and seek an opportunity and work legally in this country, reflecting on the concept or the premise that we are a Nation built of immigrants and of laws.

I would say to the Chairman of the Subcommittee that we have had the good pleasure of being able to work out a lot of issues, and we did have some logistical problems in holding a subcommittee hearing on, a markup on this particular extension, and I would argue that the expansion to 50 states, albeit voluntary, will simply not be effective. The report does indicate that we have some basic problems with accuracy and timeliness of the INS in terms of the data that they need, needs to be improved. This inaccuracy hinders the INS databases from responding. A lot of their information is outdated. Many of the employers have called and have not gotten return calls. Of course the INS now is merged under the Homeland Security Department with a completely new name and recently appointed assistant secretaries and directors of the various programs.

We need to give time for the pilot program to be really effective. I am committed to the fact that employers must do the right thing by way of documenting their employees as it relates to the impact on Americans and as it relates to the idea of ensuring the right kind of employment or the employment of Americans or those who are documented, if you will, legally permanent residents. That is a good goal to achieve. It balances alongside of protecting the homeland.

At the same time, however, we don't want abuses on either side, that people are intimidated because of their last name or because they speak a different language, because the employers don't have the right information, because they can't get the right information because the databases are not correct. For example, the data may be incorrect and someone may have secured their legal permanent resident status or legal status, and the records reflect that they have not received it. We know there are long waiting lines on attempting to obtain a green card or other documents, and therefore I think expanding it, even though it might be voluntary, I can't see any light at the end of the tunnel at this point, that the DHS would be able to muster the resources and staff to do it right. I think it's more than appropriate for this to be extended, for us to be able to get the bugs out of it, if you will, and as well to be able to work it well.

Let me just add that 39 percent of employees—employers, excuse me, reported that SSA never or only sometimes returned calls promptly, and 43 percent reported similar difficulty with the INS. And so we really need improvements in training and in system software. I don't see how we're going to get that by allowing other states to come in, and even if it's voluntary, other states might say they've offered for us to come in, let's all join. That's 50 states over the 6 we have. But I ask my colleagues to be indulging in this, to work on—what we really need to do is to provide documentation to many of those seeking legalization. I hope that we'll have the opportunity to have hearings on the earned access to legalization. But with respect to the pilot program, I don't think we have all of the T's crossed and I's dotted in this particular program.

And I might say to the chairman that this is something that we worked on a year or two ago when the H1-B visas were in place, and we argued that we had sufficient talent here in the United States of individuals who were technologically savvy and trained to be able to fit that need of that industry. So we have all committed ourselves to ensuring that we employ Americans, but we should also commit ourselves to being fair to those who are here with documented status who come from a different country, speak a different language. I would not want the fact that we are technologically unsure to then abuse the process. And I'd ask that we oppose the amendment to expand this program.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Mr. CANNON. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. I noticed that Mr. Berman has left. That's unfortunate. I had wanted to ask him a question. But let me just state at this point, having looked at this issue, we have to balance the needs of people who, who Mr. Berman talked about, who have a problem, who are not treated well in the system that we currently have. But we also have employers who need to hire people who have training, who know what they're doing and that can't be taken out. They need to rely on those people and not have them removed by a Social Security no-match letter.

And so I think—without other information, a bad program that helps voluntarily employers who are going to spend significant amounts of money on training and whose business would be significantly disrupted if those employees were jerked out from under them, is a fairly important thing, and maybe what we need to do is work on the program to make it work more efficiently and better, but still give employers the opportunity to protect themselves from hiring employees who in fact have good ID that looks good, who have Social Security numbers that may or may not be legitimate.

Thank you, Mr. Chairman. I yield back.

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I won't take 5 minutes. I don't have a dog in the philosophical fight, but the one thing that Mr. Berman said in his response in reading from the report, that is extremely troubling to me and is kind of the follow up to what Mr. Cannon just said, is that right now the pilot program is kicking out a lot of people who would otherwise be qualified because you can't get the information you need to document that they are qualified. Therefore people, employers then pass over those qualified employees to go on to other employees and hire instead, which means that a significant number of people, percentage of the people who are participating in the pilot program, are failing to hire qualified employees because of the failure of Social Security or INS, which I think is—if we were talking about a situation where you were increasing security risk to the country might be justified, but it seems to me that we ought to be making the—resolving any doubt in favor of the employment of people who are really qualified.

And as long as this system is disqualifying a significant number of people who meet the criteria and just can't get it documented, I think we ought not be expanding the system until we get the system worked out where that doesn't happen any more. And that seems to me to be the one compelling thing that I've heard, although I'm not on the Subcommittee. I haven't been involved in this debate other than that, but I've been listening to both sides, trying to figure out what the more compelling argument is, and it seems to me that that's the most compelling argument I've heard today.

You've got people who walk in, get selected to be hired, then can't get the Government to document what their real status is because the Government is not prepared or doesn't have the resources, or drags its feet, or doesn't return calls, that seems to me to be something that we ought not be condoning on a more, on a broader scale than in the pilot states that are already in the program.

And I'll yield back.

Mr. SMITH. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. I'll yield to the gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. I thank the gentleman from Texas.

In response to the gentleman from North Carolina's concern as well as that of the gentleman from California, there has been discussion that a significant portion of people that ask for work authorization are actually turned down and leave, but the report found that out of over 360,000 total transactions between November of 1997 and December of 1999, that almost 270,000 or 74 percent of aliens were found to be work authorized after initial check of the Social Security Administration records, and another 13 percent, almost 50,000, were found to be work authorized after a check of INS records.

So in 87 percent of the cases after the initial check, they were found to be work authorized, total transactions.

In a little over 32,000 cases 9 percent—9 percent the Social Security Administration issued a final nonconfirmation, and in about 1 percent of the cases the INS issued a final nonconfirmation. So 90 percent of new hires found to be work authorized were immediately confirmed by the confirmation system. In only about 4 percent of the total transactions did the new hires themselves contact the Social Security Administration or INS to resolve problems with their work authorization status, which they have the ability to do with this pilot program, and if it is expanded they will continue to do that.

Of those employees who did contact one of the agencies, 99 percent were found to be work authorized. So a significant portion of the individuals that seek to use the program to attain work authorization do, and so the suggestion or the idea that there is this large group of individuals who seek work authorization and are somehow denied, is not consistent with any other study.

Mr. WATT. Would the gentleman yield?

Mr. HOSTETTLER. And so I would like to say that once again it's not a perfect program. I don't know too many Federal Government programs that are perfect, but it's not perfect, and we wish to, we wish to continue to resolve those problems, and INS has said in the report that they are resolving those, for example, data entry programs.

But if it is not this much better program than the underlying IRCA program, then employers in Indiana and North Carolina and other places are going to be subject to IRCA.

And as Mr. Cannon pointed out, if in the course of a work site compliance investigation, individuals who have been trained for two years, are found to be out of status and that they are in the country illegally, they will be arrested, detained, ultimately deported. And so the employer loses that two years of experience and training and investment because we do not have a better system in place than what the underlying law, namely IRCA of 1986, will allow them to do, and I yield to the gentleman from North Carolina.

Mr. WATT. I appreciate the gentleman yielding—

Mr. SMITH. Just a minute. I've got the time, and I just want to add one—

Mr. WATT. Could I ask the gentleman to yield?

Mr. SMITH. Let me make one statement, then I'll be happy to yield.

And that is, in addition to the points that Mr. Hostettler just made—and I think they're absolutely persuasive when it comes to supporting this amendment—I also just want to point out again that we are not talking about a mandatory program. I happen to have supported a mandatory program in the 1996 bill. That didn't pass. We ended up with a voluntary program. But what's good for 6 states is good for 50 states. We're ironing out the wrinkles, and in point of fact, employer sanctions are absolutely worthless if you don't have a way to validate the status of people who are applying to work. If their Social Security cards don't match they have several days to try to get that resolved by going to the Social Security Administration. A lot of people do not. My hunch is the people who do not are in fact in the country illegally, and that's going to account for a large percentage of the people who don't follow through and make the effort to validate their status.

So let's remember those points during the debate and we'll be happy to yield to the gentleman from North Carolina.

Mr. WATT. I thank the gentleman for yielding, and again, I haven't been at the center of this debate, but it's quite obvious that Mr. Hostettler is reading maybe from a different report than the one that Mr. Berman is reading from. They seem to be drawing diametrically opposed results from the same report.

And I'm looking at the report now, and I just don't see that what the gentleman has indicated is correct. The recommendation, the last page of the report clearly says that: "This report concludes that we are not ready for larger-scale implementation at this time." I'm quoting from the report. So if the gentleman is——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. SCOTT. Mr. Chairman.

Ms. SÁNCHEZ. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, there's an inference in all this discussion that we're fighting terrorism, and I'm at a loss to see how a substantial proportion of people trying to apply for a job at a meat-packing plant or a farm worker getting denied employment is going to have any effect—I mean is there any evidence that terrorists are applying for any of these jobs?

The report says clearly that we're not ready for this large scale, and it's just going to cause such massive confusion, I would hope—the point of the pilot is to get things straight before you go large scale and mess everything up.

I will yield back.

Chairman SENSENBRENNER. The question is on the first——

Ms. SÁNCHEZ. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California.

Ms. SÁNCHEZ. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. SÁNCHEZ. Thank you. I just wanted to point out, as my distinguished colleague did, that under the recommendation section of the report, the very first line, the very first recommendation reads, and I quote, "Based on the evaluation findings, the basic pilot pro-

gram should not be expanded to a mandatory or large-scale program.”

And I’m going to read further down the report. “The evaluation uncovered sufficient problems in the design and implementation of the current program to preclude recommending that it be significantly expanded. Some of these problems could become insurmountable if the problem were to be expanded dramatically in scope.”

And I just want to point out that the amendment that’s being offered flies completely in the face of what the very first recommendation is, which is, maintain the test pilot program. Try to work out those bugs in the program, and don’t take the leap of faith of expanding it dramatically, because again, as the report concludes, those problems could be insurmountable.

So with that, I would urge my colleagues to not support this amendment, and I would yield back the remainder of my time.

Chairman SENSENBRENNER. The question is on the Hostettler amendment. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

If not, a reporting—

Ms. JACKSON-LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. JACKSON-LEE. Two amendments at the desk.

Chairman SENSENBRENNER. Which amendment does the gentleman wish reported?

Ms. JACKSON-LEE. We’re getting it now, Mr. Chairman. Thank you. This is amendment 143.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 2359, offered by Ms. Jackson-Lee of Texas. Beginning on page 2, strike line 6 through page 3, line 4.

[The amendment of Ms. Jackson-Lee follows:]

AMENDMENT TO H.R. 2359
OFFERED BY MS. JACKSON-LEE OF TEXAS

Beginning on page 2, strike line 6 through page 3,
line 4.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON-LEE. Thank you very much, Mr. Chairman. The language proposed in Section 3 of the Basic Pilot Extension Act would permit State and local governments to use the basic pilot confirmation system to check the immigration or citizenship status of all U.S. citizens and immigrants who come within their purview. This would expand the basic pilot program far beyond the employment contact, and it would do so without a hearing on whether such State and local access to basic pilot information is inappropriate.

Under the existing pilot program, employers provide the Department of Homeland Security with information about employment authorization that has been provided by a newly hired alien employee. DHS then confirms that the employee is authorized to work in the United States or reports that such work authorization cannot be confirmed. Fair enough.

Under Section 3, however, the State or local government agency would be taking DHS for citizenship or immigration status information in addition to the identity and employment eligibility records obtained from the basic pilot confirmation, which is quite different from asking for confirmation or non-confirmation of the existence of work authorization.

Moreover, Section 3 does not contain privacy protections or protections against abuse by individuals within State and local governments. Moreover, State and local governments already have access to an information system that they may use to determine whether documents provided by non-citizens match those in the DHS database. Such information is available through the Systematic Alien Verification for Entitlements—that's the SAVE program—which was created by Section 121 of the Immigration Reform and Control Act of 1986.

The SAVE program includes numerous safeguards to protect against misuse of information, discrimination, and inappropriate disclosure. Section 3 would move us in the direction of establishing a national register or database of all Americans, the necessary precursor to implementation of a national ID. It would do this by amalgamating data of citizens and immigrants into a single database that would be used for multiple purposes outside of the employment content.

I urge, therefore, my colleagues to consider the invasion of privacy that Section 3 now allows and the fact that it is redundant inasmuch as our local governments, State and municipal governments have access to this information. It is key, and I think because of our responsibilities in the Judiciary Committee, that we balance the protection of the homeland with our civil liberties. As we have seen a number of incidences coming about with PATRIOT Act I and now the proposals of PATRIOT Act II, it is our responsibility to find a very balanced perspective, keeping in mind the responsibilities to secure our homeland, but as well keeping in mind the responsibilities to ensure that our civil liberties and protected and our privacy is protected.

With that, I yield back.

STATEMENT OF CONGRESSWOMAN SHEILA JACKSON-LEE

The language proposed in Section 3 of the Basic Pilot Extension Act would permit State and local governments to use the Basic Pilot confirmation system to check the immigration or citizenship status of all U.S. citizens and immigrants who come within their purview. This would expand the basic pilot program far beyond the employment context, and it would do so without a hearing on whether such State and local access to Basic Pilot information is appropriate.

Under the existing Basic Pilot, employers provide the Department of Homeland Security (DHS) with information about employment authorization that has been provided by a newly hired, alien employee. DHS then confirms that the employee is authorized to work in the United States or reports that such work authorization cannot be confirmed.

Under Section 3, the State or local government agency would be asking DHS for citizenship or immigration status information in addition to the identity and employment eligibility records obtained from the Basic Pilot confirmation, which is quite different from asking for conformation or nonconformation of the existence of work authorization. Moreover, Section 3 does not contain privacy protections or protections against abuse by the individuals within State and local governments.

Moreover, State and local governments already have access to an information system that they may use to determine whether documents provided by noncitizens match those in the DHS database. Such information is available through the Systematic Alien Verification for Entitlements (SAVE) Program, which was created by section 121 of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603). The SAVE program includes numerous safeguards to protect against misuse of information, discrimination, and inappropriate disclosure.

Section 3 would move us in the direction of establishing a national register or database of all Americans, the necessary precursor to implementation of a national ID. It would do this by amalgamating data of citizens and immigrants into a single database that would be used for multiple purposes (outside of the employment context).

I urge you therefore to vote for my amendment, which would delete Section 3 from the Basic Pilot Extension Act.

Thank you.

Chairman SENSENBRENNER. The gentleman from Indiana.

Mr. HOSTETTLER. Mr. Chairman, I have no—

Chairman SENSENBRENNER. Questions on the Jackson-Lee amendment?

[No response.]

Chairman SENSENBRENNER. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If not, a reporting quorum is present. The question occurs on the motion to report the bill—

Ms. JACKSON-LEE. I have another amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 2359, offered by Ms. Jackson-Lee of Texas. Page 2, line 2, strike "11-year" and insert "9-year."

[The amendment of Ms. Jackson-Lee follows:]

AMENDMENT TO H.R. 2359
OFFERED BY MS. JACKSON-LEE OF TEXAS

Page 2, line 2, strike “11-year” and insert “9-year”.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON-LEE. Mr. Chairman, this is a very simple amendment. It simply asks, because of the difficulties in the databases and the inability for the information secured by SSA to be accurate, because the inaccuracies noted in the report, that this extension be only for 3 years instead of 5 years. And I'd ask my colleagues to vote to have this be a 3-year extension as opposed to a 5-year extension.

STATEMENT OF CONGRESSWOMAN SHEILA JACKSON-LEE

This amendment would extend the Basic Pilot Program for three years rather than for the five-year period that is provided for in the Basic Pilot Extension Act. As the committee knows, an independent evaluation of the Basic Pilot Program was conducted for the Department of Justice by the Institute for Survey Research at Temple University (ISR). That evaluation revealed a number of concerns about the implementation of the Basic Pilot, such as the following:

1. The accuracy and timeliness of Immigration and Naturalization Service (INS) data need to be improved. The efficient operation of the pilot program was hindered by inaccuracies and outdated information in INS databases.

2. There have been complaints alleging actual or potential harm to individuals. Although employees were largely satisfied with the services provided by INS and the Social Security Administration (SSA), they occasionally have made complaints to the Office of Special Counsel (OSC) in the Civil Rights Division of the Department of Justice about INS implementation of the pilots.

3. The Basic Pilot system needs computer and technical support improvements. One-third of the employers said they had encountered difficulties in setting up the Basic Pilot program. Most of the problems involved modem connection, software, hardware, and telephone lines. Many employers also mentioned having these problems when the system was online. Further, 39% of employers reported that SSA never or only sometimes returned calls promptly and 43% reported similar difficulty with INS.

4. Improvements are needed in training and in system software. Improvements need to be incorporated into the Basic Pilot to reduce discretion in how employers use the system and in the extent to which they follow pilot procedures designed to protect employee rights. System program changes are needed also to increase checks on name variations and to perform edit and consistency checks of the data entered by the employer.

5. Quality assurance measures need to be incorporated into the program. Periodic reports are needed to identify information which suggests that employers may not be using the system correctly and to summarize general trends in verification requests.

6. Employers sometimes fail to follow mandated safeguards for the Basic Pilot. There is evidence that employers are engaging in practices specifically prohibited by the Basic Pilot MOU.

7. Concerns regarding employee privacy. Although the majority of employers appear to safeguard their employees' privacy, some did not exhibit the same level of concern. For instance, 15% of employees who were told about problems with their work authorization reported that they were not told in a private setting.

8. Missed deadlines. One complaint mentioned by 16% of employers about the Basic Pilot is that at times the number of employees hired is so great that it is impossible to submit the information required by the deadline of 3 business days.

9. Failure to inform employees of their rights. Employers do not always follow procedures designed to inform employees and prospective employees of their rights. Only half of the establishments posted the required Basic Pilot program notice where job applicants could easily see it. It appears that 73% of the employees who should have been informed of work authorization problems were not. These employees were thus precluded from resolving the problems. Nineteen percent of pilot employers reported that they do not always provide employees with a printed Notice of Tentative Nonconfirmation.

I am opposed to a five-year extension of the Basic Pilot in the absence of evidence indicating that enough progress has been made in addressing these concerns to warrant such a lengthy extension. My amendment would provide a three-year extension which is more than generous under these circumstances. I also hope that an oversight hearing will be held early next year to evaluate the progress that DHS has made in resolving these problems.

Thank you.

Chairman SENSENBRENNER. The—does the gentlewoman yield back?

Ms. JACKSON-LEE. I yield back.

Chairman SENSENBRENNER. The question is on the Jackson-Lee amendment. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. A reporting quorum is present. The question occurs on the motion to report the bill H.R. 2359 favorably as amended. Those in favor will say aye? Opposed, no?

The ayes appear to have it—

Ms. JACKSON-LEE. Roll call.

Chairman SENSENBRENNER. A roll call is ordered. Those in favor of reporting the bill H.R. 2359 favorably as amended will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye. Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Jenkins.

Mr. JENKINS. Aye.

Mr. CLERK. Mr. Jenkins, aye. Mr. Cannon.

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus.

[No response.]

The CLERK. Mr. Hostettler.

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green.

[No response.]

The CLERK. Mr. Keller.

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Ms. Hart.

Ms. HART. Aye.

The CLERK. Ms. Hart, aye. Mr. Flake.

Mr. FLAKE. Aye.

The CLERK. Mr. Flake, aye. Mr. Pence.

Mr. PENCE. Aye.

The CLERK. Mr. Pence, aye. Mr. Forbes.

Mr. FORBES. Aye.

The CLERK. Mr. Forbes, aye. Mr. King.

Mr. KING. Aye.

The CLERK. Mr. King, aye. Mr. Carter.

Mr. CARTER. Aye.

The CLERK. Mr. Carter, aye. Mr. Feeney.
 Mr. FEENEY. Aye.
 The CLERK. Mr. Feeney, aye. Mrs. Blackburn.
 Mrs. BLACKBURN. Aye.
 The CLERK. Mrs. Blackburn, aye. Mr. Conyers.
 Mr. CONYERS. No.
 The CLERK. Mr. Conyers, no. Mr. Berman.
 [No response.]
 The CLERK. Mr. Boucher.
 [No response.]
 The CLERK. Mr. Nadler.
 [No response.]
 The CLERK. Mr. Scott.
 Mr. SCOTT. No.
 The CLERK. Mr. Scott, no. Mr. Watt.
 Mr. WATT. No.
 The CLERK. Mr. Watt, no. Ms. Lofgren.
 [No response.]
 The CLERK. Ms. Jackson-Lee.
 Ms. JACKSON-LEE. No.
 The CLERK. Ms. Jackson-Lee, no. Ms. Waters.
 Ms. WATERS. No.
 The CLERK. Ms. Waters, no. Mr. Meehan.
 [No response.]
 The CLERK. Mr. Delahunt.
 [No response.]
 The CLERK. Mr. Wexler.
 [No response.]
 The CLERK. Ms. Baldwin.
 Ms. BALDWIN. No.
 The CLERK. Ms. Baldwin, no. Mr. Weiner.
 [No response.]
 The CLERK. Mr. Schiff.
 [No response.]
 The CLERK. Ms. Sánchez.
 Ms. SÁNCHEZ. No.
 The CLERK. Ms. Sánchez, no. Mr. Chairman.
 Chairman SENSENBRENNER. Aye.
 The CLERK. Mr. Chairman, aye.
 Chairman SENSENBRENNER. Are there members in the chamber who wish to cast or change their votes? If not, the clerk will report.
 The CLERK. Mr. Chairman, there are 18 ayes and 8 noes.
 Chairman SENSENBRENNER. And the motion to report favorably is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today. Without objection, the chairman is authorized to move to go to conference pursuant to House Rules. Without objection, the staff is directed to make technical and conforming changes, and all members will be given 2 days as provided by the House Rules in which to submit additional, dissenting, supplemental, or minority views.

DISSENTING VIEWS

We write these views in opposition to H.R. 2359, the “Basic Pilot Extension Act of 2003”. H.R. 2359 would extend for an additional five years the Basic Pilot Program to electronically verify the employment authorization of newly hired employees. While we support a basic Extension of the pilot program to continue to examine ways to verify employment eligibility, H.R. 2359 extends the program far beyond the employment context and puts in place the mechanism for a controversial national identity system. Additionally, amendment passed in the committee expands the program to all fifty states, without regard to the existing program’s inaccuracies and significant privacy concerns.

Section 3 of the “Basic Pilot Extension Act of 2003” would permit any government agency to use the Basic Pilot confirmation system to check the immigration or citizenship status of all U.S. citizens and immigrants who come within their purview. This would include those who seek driver’s licenses, professional licenses, or any person who is subject to an inquiry of a federal, state or local government agency. Such a vast expansion would magnify the existing privacy and inaccuracy problems that already plague the current program. Moreover, the provision lacks any privacy protections or protections against abuse by state and local governments. For these reasons, conservative groups such as Americans for Tax Reform and The American Conservative Union¹ and immigration groups such as the National Immigration Law Center² strongly oppose H.R. 2359.

Most importantly, we are concerned that section 3 is a veiled attempt to put in place the mechanism for eventual adoption of a controversial national identification program. The expansion of the program under section 3 would effectively create a single database that would be used for multiple purposes far beyond the employment context and would make it much easier for the government to track its own citizens. Such a vast invasion of citizens’ privacy must be carefully examined and debated by Congress. However, this broad expansion of government power has been attached to a seemingly benign program extension, circumventing any committee hearings or subcommittee mark-up. Rep. Jackson-Lee attempted to remove this controversial piece from the bill with an amendment, defeated by voice vote, that would have struck all of section 3 from the bill.

We further oppose an amendment passed in the Judiciary Committee that would expand the pilot program to all fifty states with-

¹Letter to Honorable F. James Sensenbrenner and Honorable John Conyers, Jr., from Americans for Tax Reform and the American Conservative Union; September 24, 2003. On file with House Judiciary Committee Democratic Staff.

²Letter to Honorable F. James Sensenbrenner, Jr., from the National Immigration Law Center; September 24, 2003. On file with the House Judiciary Committee Democratic Staff.

out regard for the significant deficiencies of the current program. An INS funded report, issued only after the last extension of the program was granted, found that the current pilot program was hindered by inaccuracies and outdated information in the INS databases and that it did not consistently provide timely immigration data.³ The report also found that some employers compromised the privacy of workers in various ways such as failure to safeguard access to the computer database. Some participating employers also engaged in prohibited employment practices, including pre-employment screening which denied workers both a job and the opportunity to correct database inaccuracies. Due to these findings, the report concluded that the Basic Pilot is not ready for larger-scale implementation at this time.

Supporters of the amendment dismissed concerns about privacy and data inaccuracies, citing that the proposed expansion would be voluntary and that the problems cited in the report were not major. In truth, the report in no way excludes voluntary expansion from its recommendations.⁴ In fact, any nationwide expansion, mandatory or voluntary, would be significant because the program currently exists in only six states. Even further, the INS commissioned report clearly cautions that the program should not be significantly expanded because the above cited problems could become insurmountable if the program were expanded in scope.⁵

It is imperative that before Congress expands the Basic Pilot Program, it must first ensure that the Bureau of Citizenship and Immigration Services (BCIS), the Bureau of Immigration and Customs Enforcement (ICE), and the Social Security Administration (SSA) focus on accurately updating their databases to prevent authorized workers from being turned away from jobs. The existing privacy problems must also be addressed. For these reasons, Rep. Jackson-Lee offered an amendment, defeated by voice vote, that would have enabled a Congress to more frequently examine the Basic Pilot Program by changing the extension from five additional years to three.

³INS Basic Pilot Evaluation Summary Report; January 29, 2002.

⁴The INS report states at page vii: "Based on the evaluation findings, electronic verification of employment authorization as tested in the Basic Pilot, while potentially a valid concept, is not ready for larger-scale implementation at this time."

⁵The INS report states at page 41: "The evaluation uncovered sufficient problems in the design and implementation of the current program to preclude recommending that it be significantly expanded. Some of these problems could become insurmountable if the program were to be expanded dramatically in scope. The question remains whether the program can be modified in a way that will permit it to maintain or enhance its current benefits while overcoming its weaknesses."

Although we support extending the Basic Pilot Program for employment verification, we oppose the “Basic Pilot Program Extension Act of 2003” because it goes far beyond a simple program extension and would significantly change current law. This legislation not only expands a currently imperfect program, it also creates a new and controversial identification database that would threaten the privacy of all United States citizens. It would be irresponsible for Congress to make such a significant change to existing law without first considering it on its own merits.

JOHN CONYERS, Jr.
BOBBY SCOTT.
ZOE LOFGREN.
MAXINE WATERS.
WILLIAM DELAHUNT.
TAMMY BALDWIN.
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